

## REMARKS

All withdrawals, cancellations and amendments have been made herein without prejudice.

In the Office Action dated April 16, 2003, the Examiner initially requested a restriction requirement, and applicant has elected without prejudice and with traverse to proceed with the claims directed to claims 14 and 19, and reserves the right to file a divisional application with respect to the non-elected subject matter. Applicant notes that the Examiner must show that the claims are directed to inventions alleged separate *and* distinct, a requirement that, respectfully, does not appear to have been met. However, in light of the absence of prejudice (other than the need to file and pay additional fees for prosecution of the non-elected claims), applicant has accepted the restriction for the time being.

The Examiner is thanked for the obvious diligence demonstrated in reading and evaluating the subject application and for the thought given in the Office Action. The Examiner is also thanked for appreciating the allowability of the claimed subject matter in dependent claims 15, 17 and 19 (as indicated in paragraph 5, page 5 of the Office Action) if rewritten in independent form, incorporating the limitations of the independent claims. Applicant has done so, and allowance on this basis alone is sought.

Applicant has including in these amended, allowable claims, in Markush format, the various formulae that underlie the calculation of settlement price, as stated in the other independent claims. These added restrictions further define patentability over the subject prior art and add limitations that should in no manner change and, indeed, enhance the Examiner's position of allowability.

The noted problem that the specification, while under the 150 page limit, exceeds a single page is occasioned by the programs used to generate the formulae. Modifications have

been made to meet and obviate the objection to the specification, as the abstract now conforms to the single page requirement as required for printing.

The noted rejection under 35 U.S.C. §112, second paragraph, while overcomeable by way of simply changing the term "system" to "method" would, in applicant's view, respectfully be in error, and traversal of this rejection is sought. The claim is directed to a system of trading financial instruments in comparison to the method of creating them. As a system, it includes the listing (on an exchange) and trading functions which are archetypical elements of a system rather than a method. Reconsideration and removal of this ground for rejection is thus sought.

Applicant further notes the Examiner's contention concerning alleged unpatentable subject matter under 35 U.S.C. § 101 on the grounds that alleged "abstract ideas" are the only elements of claims 14, 16 and 18. In light of the fact that applicant has deleted these claims and added the restrictions to the noted allowable subject matter in claims 15, 17 and 19, without prejudice, nor further comment is believed necessary other than to note applicant's disagreement with what is now more or less a philosophical debate. Applicant's counsel would be delighted to share that discussion with the Examiner at the next opportunity for personal interviews in Washington, but will decline to waste further valuable Examiner time at the moment engaging the dialogue.

Examiner cites U.S. patent No. 6,321,212 to Lange as allegedly anticipating claims 14, 16 and 18 pursuant to 35 U.S.C. § 102(e). While this argument is moot in light of the amendments, applicant wishes to bring to the Examiner's attention that column 37 line 12 through column 38 line 62 of the subject reference merely deals with training a financial instruments that settles to a pre-determined states. This has nothing to do with trading upon volatility, in accordance with the subject invention as claimed. Rather, Lange refers to

"market volatility" is example 3.1.1 as a means of getting to the states. In other words, if volatility is high, then maybe the states should be, for example, 5 point apart. Likewise, if volatility is low, then maybe the state should be 1 point apart. This is traditional thinking, but complete unrelated to the novelty herein.

Stated slightly differently, Lange uses volatility as an input to his formula, whereas in the subject invention, applicant utilizes volatility as a result of the formula. Thus, applicant considers the apth that the asset is taking during a period, where is Lange seeks only the final resting place of the asset. All exchange traded financial institutions in existence settle to the final value of something. Since the subject application settles to the path taken in getting there, the uniqueness is apparent, and obviously recognized by the Examiner in his allowance of certain claims.

Again, the Examiner is thanked for the diligence. It is hoped that the case, now sitting for some time, may be expedited in light of the compliance with the Examiner's requests. Accordingly, it is respectfully submitted that the instant application is now in condition for allowance.

The new data on applicant's counsel should be noted on the File Wrapper for further and future correspondence.

Respectfully submitted,



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